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Recent Developments in Pennsylvania Employment Law

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EMPLOYMENT LAW — NEGLIGENT SUPERVISION AND RETENTION — RESTATEMENT (SECOND) OF TORTS § 317 — EMPLOYER'S DUTY TO PREVENT AN EMPLOYEE FROM INTENTIONALLY HARMING OTHERS WHEN THE EMPLOYEE IS OUTSIDE THE SCOPE OF EMPLOYMENT — The Pennsylvania Supreme Court held that a Bishop and a Diocese were liable under the theory of negligent supervision and retention for a priest's sexual abuse of a minor in a motel room because they both knew the priest had a propensity for pedophilic behavior, they concealed this fact and allowed the priest to have unsupervised contact with children, and the priest was able to enter the motel room only because of his status as a priest, the servant of the Bishop and the Diocese.

Hutchison v. Luddy, 742 A.2d 1052 (Pa. 1999) (plurality opinion).

In 1982, when Michael Hutchison was fifteen years old and staying in an Altoona motel room, his priest and godfather, Francis Luddy, entered the motel room and sexually molested Michael.[1] A similar incident occurred two years later; in both cases, Michael had run away from his family in Akron, Ohio and hitchhiked to Altoona to talk to Luddy about family problems.[2] These two incidents followed a pattern of Luddy's sexual molestation of Michael stemming back to 1977, when Michael was ten to eleven years old.[3] Over these four years, "Luddy molested Michael

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1. *See* Hutchison v. Luddy, 742 A.2d 1052, 1054 (Pa. 1999) (plurality opinion). This incident has also been reported as occurring "in early 1983." *See* Hutchison v. Luddy, 683 A.2d 1254, 1255 n.3 (Pa. Super. Ct. 1996), *overruled by* Hutchison v. Luddy, 742 A.2d 1052 (Pa. 1999).

2. *See Hutchison*, 742 A.2d at 1054; *Hutchison*, 683 A.2d at 1258 (Ford Elliot, J., dissenting). Michael later testified that on both occasions "it was Luddy who told Michael to rent a room at the Townhouse Motel and that [Luddy] would meet Michael there as soon as he could." *See Hutchison*, 742 A.2d at 1054 n.1.

3. *See Hutchison*, 742 A.2d at 1053. Luddy's abuse of Michael is especially repugnant

approximately fifty to seventy-five times in Luddy's rectory bedroom" at St. Therese's Catholic Church in Altoona.[4] Luddy later admitted that beginning in 1967, about two years after he was ordained as a priest, he molested "child after child" within his diocese, the Diocese of Altoona-Johnstown ("Diocese"), including molesting Michael's brother, Mark, "hundreds of times."[5] At the time of the 1982 and 1984 motel room incidents, "Luddy was working at St. Mary's [Catholic] Church in Windber, Pennsylvania, where he had been reassigned."[6]

In 1988, Michael sued Luddy, St. Therese's, the Diocese, and Bishop James Hogan, who "served as the Bishop of the Diocese at the time of the incidents in question," for damages caused by the two incidents in the Altoona motel rooms.[7] Michael's complaint "alleg[ed] causes of action for, inter alia, battery, intentional infliction of emotional distress, and negligent retention and supervision."[8] The trial court allowed Michael to pursue his negligent retention and supervision claim under Section 317 of the *Restatement (Second) of Torts*, which imposes liability upon a master for certain acts of the servant committed outside the scope of employment.[9] During an eleven-week trial, "Michael testified about the 1982 and 1984 incidents," other boys testified about similar patterns of abuse, Luddy admitted to much of the abuse, and Michael "presented evidence that the Diocese had actual notice of Luddy's pedophilia" as early as 1967, yet did nothing to prevent future such incidents.[10]

After the trial, the jury found as follows:

> St. Therese's, Bishop Hogan and the Diocese knew Luddy was molesting children, . . . they were negligent in their retention

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when considered in light of the fact that Michael "is mildly retarded and has a low I.Q." *See id.*

4. *See id.*

5. *See id.* at 1054. Apparently, Luddy's pattern of behavior was one of "befriending . . . boys, luring them and their families into a sense of trust, and then molesting the boys." *Hutchison*, 683 A.2d at 1258 (Ford Elliot, J., dissenting).

6. *Hutchison*, 742 A.2d at 1054.

7. *See Hutchison*, 742 A.2d at 1054; *Hutchison*, 683 A.2d at 1255. Only these last two incidents escaped the bar of the applicable statutory limitations period. *See Hutchison*, 742 A.2d at 1054; *Hutchison*, 683 A.2d at 1255 n.3. St. Mary's, where Luddy worked at the time of the two Altoona motel incidents, "was not a party-defendant in this action." *Hutchison*, 683 A.2d at 1255 n.4.

8. *Hutchison*, 742 A.2d at 1054.

9. *See Hutchison*, 683 A.2d at 1255-56; RESTATEMENT (SECOND) OF TORTS § 317 (1974).

10. *See id.* The Diocese disputed the evidence of actual notice of Luddy's pedophilia. *See Hutchison*, 683 A.2d at 1259-60 (Ford Elliott, J., dissenting).

> and supervision of Luddy, . . . they had a pattern and practice of ignoring allegations of pedophilic behavior among priests, and . . . their negligence was a substantial factor in bringing harm to Michael. The jury attributed liability thirty-six percent to Luddy, eleven percent to St. Therese's, and fifty-three percent to Bishop Hogan and the Diocese and awarded Michael a total of $519,000.00 in compensatory damages. The jury also found that the conduct of all the defendants was outrageous, and therefore awarded Michael punitive damages totaling $1,050,000.00 (fifty thousand dollars against Luddy and one million dollars against St. Therese's, Bishop Hogan and the Diocese).[11]

St. Therese's, Bishop Hogan, and the Diocese appealed to the Pennsylvania Superior Court, which reversed the trial court and discharged all three from liability.[12] In an opinion by Judge John G. Brosky, the superior court analyzed the trial court's decision to allow Michael's claim under Section 317 of the *Restatement (Second) of Torts*, but the superior court did not review Pennsylvania case law interpreting that section.[13] The court held that St. Therese's, Bishop Hogan, and the Diocese could not be liable for negligent supervision and retention under Section 317 because the facts of the case failed to meet the threshold requirement of Section 317: the act that caused harm must have occurred "upon [a] premises . . . upon which the servant is privileged to enter only as [the master's] servant."[14] Judge Kate Ford Elliot wrote a dissenting opinion, summarizing the "relevant testimony before the jury," "viewing [that] evidence in the light most favorable to [Michael] as the verdict winner," and concluding that there was sufficient reliable evidence to support the jury

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11. *Hutchison*, 742 A.2d at 1054.

12. *Hutchison*, 683 A.2d at 1255. Luddy was not a party to this appeal; he filed a separate appeal to the superior court, which was consolidated but later severed from the appeal of St. Therese's, Bishop Hogan, and the Diocese. *See id.* at 1254 n.2.

13. *Id.* at 1254-56; *see also Hutchison*, 742 A.2d at 1060 (noting that the superior court did not consider prior Pennsylvania case law interpreting Section 317 and instead "analyzed Michael's claim for negligent supervision and retention exclusively pursuant to Restatement Section 317"). In her dissenting opinion, Judge Ford Elliott analyzed the one Pennsylvania Supreme Court decision interpreting Section 317. *Hutchison*, 683 A.2d at 1258-59 (Ford Elliott, J., dissenting) (citing and analyzing Dempsey v. Walso Bureau, Inc., 246 A.2d 418 (Pa. 1968)).

14. *Id.* at 1254-56; *see* RESTATEMENT (SECOND) OF TORTS § 317(a)(i) (1974). Of the three-judge panel of the Superior Court, Judge Patrick R. Tamilia concurred only in the result of Judge Brosky's opinion, and Judge Kate Ford Elliott dissented. *Hutchison*, 683 A.2d at 1256 (Tamilia, J., concurring) and at 1256 (Ford Elliott, J., dissenting).

verdict for compensatory damages.[15]

Michael then appealed to the Pennsylvania Supreme Court, which affirmed the superior court's decision to release St. Therese's from liability, but reversed the superior court's decision to release Bishop Hogan and the Diocese from liability.[16]

In the plurality opinion by Justice Sandra Schultz Newman, the court began its analysis of the superior court's opinion by quoting Section 317 of the *Restatement (Second) of Torts*. That section, titled "Duty of Master to Control Conduct of Servant," states as follows:

> A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if
>
> (a) the servant
>
> (i) is upon the premises in possession of the master *or upon which the servant is privileged to enter only as his servant*, or
>
> (ii) is using a chattel of the master, and
>
> (b) the master
>
> (i) knows or has reason to know that he has the ability to control his servant, and
>
> (ii) knows or should know of the necessity and

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15. *Hutchison*, 683 A.2d at 1257-60 (Ford Elliott, J., dissenting). However, Judge Ford Elliott would have vacated the award of punitive damages, writing that

> while there was ample evidence presented in the instant case that the conduct of the Diocese was inept, exhibited a complete lack of understanding of the disease of pedophilia, and constituted gross negligence, I cannot find that the evidence was sufficient as a matter of law to show that the conduct of the Diocese rose to the level of being malicious, wanton, or based on any evil motive.

Id. at 1261 (Ford Elliott, J., dissenting).

16. *Hutchison*, 742 A.2d at 1062. At the supreme court, attorney Thomas L. Cooper from Pittsburgh and attorney Richard M. Serbin from the Altoona law firm of Reese, Serbin, Kovacs & Nypaver represented Michael; attorneys Carl A. Eck and Louis C. Long from the Pittsburgh law firm of Meyer, Darragh, Buckler, Bebenek & Eck represented St. Therese's, Bishop Hogan, and the Diocese. *See id.* at 1053.

The supreme court was somewhat splintered for this difficult case. Justice Sandra Schultz Newman wrote the plurality opinion announcing the judgment of the court, which was joined by Chief Justice John P. Flaherty, Jr. *Id.* at 1053-62. Justice Ralph J. Cappy filed a separate concurring opinion, *id.* at 1062-64 (Cappy, J., concurring), as did Justice Thomas G. Saylor, who was joined by Justice Stephen A. Zappala, *id.* at 1064 (Saylor, J., concurring). Justice Russell M. Nigro concurred in the plurality's result only. *Id.* at 1062. Finally, Justice Ronald D. Castille filed a dissenting opinion. *Id.* at 1064-68 (Castille, J., dissenting).

opportunity for exercising such control.[17]

Justice Newman then whittled Michael's lengthy complaint into general terms and summarized it as a "cause of action against St. Therese's, Bishop Hogan and the Diocese for negligent retention and supervision of Luddy."[18] Unlike the superior court, however, the supreme court distinguished between the three parties "because of the timing of the incidents of abuse on which th[e] action is based."[19] The court found that "the only harm for which St. Therese's [was] responsible [was] the abuse that took place while Luddy was assigned to St. Therese's and Michael was a parishioner there, and liability for all such incidents of abuse is barred by the statute of limitations."[20] Therefore, the supreme court affirmed the superior court's decision "insofar as it absolve[d] St. Therese's of liability."[21]

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17. RESTATEMENT (SECOND) OF TORTS § 317 (1974) (emphasis added). The emphasized phrase, referred to by the supreme court as the "privilege element of the location requirement," becomes the critical language in the case. *See Hutchison*, 742 A.2d at 1060.

18. *Hutchison*, 742 A.2d at 1056.

19. *Id.*

20. *Id.*

21. *Id.* Apparently the supreme court is unwilling to extend liability under Section 317 to responsibility for the acts of *former* employees, as the high courts of other jurisdictions have done. *See* Marquay v. Eno, 662 A.2d 272, 280-81 (N.H. 1995) (noting that "employers have been held liable for criminal conduct by off-duty employees or former employees where such conduct was consistent with a propensity of which the employer knew or should have known, and the association between the plaintiff and the employee was occasioned by the employee's job") (citations omitted). In a 1980 case, the Pennsylvania Superior Court reversed a trial court's decision to sustain a defendant's preliminary objection in the nature of a demurrer in a negligent supervision and retention case involving a *former* employee; the former employee raped a woman who was a customer of the employer, having gained entry to her home by pretending to be there on his former employer's business. *See* Coath v. Jones, 419 A.2d 1249 (Pa. Super. Ct. 1980).

The *Hutchison* court expressly recognized that St. Therese's contributed to the causation of Luddy's abuse of Michael at the motel rooms, stating, "The jury found, and we have no doubt, that St. Therese's *failure to warn* was a substantial factor in bringing harm to Michael." *Hutchison*, 742 A.2d at 1057 (emphasis added). Justice Newman's opinion does not make clear whether the court is releasing St. Therese's from liability because it did not have a duty to warn other parishes about Luddy's pedophilic conduct, of which the jury found St. Therese's had knowledge, or whether St. Therese's did have a duty to warn, but did not breach that duty. In a footnote in his concurring opinion, Justice Cappy elaborates somewhat on this issue: "Moreover, 'decisions regarding placement, discipline, and transfer of priests were not made at the parish level. Under these circumstances I do not believe that St. Therese's Church can be held liable." *Hutchison*, 742 A.2d at 1063 n.1 (Cappy, J., concurring). However, it is arguable that despite not having the authority to make decisions regarding transfer, St. Therese's, who could be regarded as Luddy's former employer, still had a duty to warn the parish that Luddy was transferred to about his known pedophilic behavior, and that the breach of that duty occurred within the statutory limitations period for the two incidents on which this lawsuit was based. It is unfortunate that the

In reviewing Michael's negligent supervision and retention claims against Bishop Hogan and the Diocese, the supreme court found that the superior court erred by failing to review those claims under Pennsylvania (and other jurisdictions') case law, and by misinterpreting the "privilege element of the location requirement of Restatement Section 317."[22] The court then reviewed cases from Pennsylvania and other jurisdictions dealing with whether employers should be held liable for the intentional acts of employees that are outside the scope of employment, but that involve a dangerous propensity of the employee of which the employer was aware.[23] Based on these cases and evidence introduced at trial, the court concluded that Bishop Hogan and the Diocese were liable for Luddy's molestation of Michael:

> Bishop Hogan and the Diocese . . . undertook a course of conduct that increased the risk that Luddy would abuse Michael and other children. Instead of keeping him away from children altogether, they disregarded Luddy's misconduct and allowed him to have unsupervised contact with children. Instead of responding to Luddy's pedophilic behavior, they concealed and ignored it. . . . Their inaction in the face of such a menace is not only negligent, it is reckless and abhorrent.[24]

Regarding the privilege aspect of Section 317, the court corrected the superior court's slim analysis of this requirement. The superior court held that this element was not satisfied because "although Luddy may have been privileged to enter [the motel rooms] for the

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Pennsylvania Supreme Court was not able to clarify this important issue when releasing St. Therese's from liability.

22. *Hutchison*, 742 A.2d at 1057-60.

23. *Id.* at 1057-59 (citing and discussing Dempsey v. Walso Bureau, Inc., 246 A.2d 418 (Pa. 1968) (holding that the employer of a security guard could be liable for an assault by the guard that occurred at the premises to be guarded if the employer knew or should have known about the security guard's propensity for violence); Coath v. Jones, 419 A.2d 1249 (Pa. Super. 1980) (holding that the owner of a utility company could be liable for a former employee's rape of a customer that occurred at the customer's home, entry made because the former employee had previously been allowed to enter on employer's business, if the employer knew or should have known about the former employee's propensity for sexual attacks); Golden Spread Council, Inc. v. Akins, 926 S.W.2d (Tex. 1996) (holding that a Council of the Boy Scouts could be liable for an act of sexual molestation committed by a scoutmaster if the Council knew or should have known that the scoutmaster had a propensity for molesting boys); Marquay v. Eno, 662 A.2d 272 (N.H. 1995) (holding that a school district could be liable for an off-duty teacher's abuse of children if the school district knew or should have known about the teacher's propensity for such abuse)).

24. *Id.* at 1059.

purpose of providing pastoral care . . . , he certainly was not privileged to enter the motel room[s] as a servant of [Bishop Hogan and the Diocese] for the purpose of engaging in sexual misconduct."[25] Justice Newman wrote that the proper focus of the privilege element, which applies to a case where the alleged tortious act occurs off the employer's premises, is not what the servant intended to do after entering the premises, but rather how the servant gained access to the premises in the first place.[26] If the servant gained access to the premises because he was privileged to be there due to his status as the master's servant, then the privilege element of Section 317 is met.[27] The court concluded that there was sufficient evidence on record for a jury to properly conclude that Luddy gained acces to the motel rooms because of his status as a priest, the servant of the Bishop and the Diocese.[28] The court ended its analysis of the case by noting that because the Bishop and the Diocese had knowledge of Luddy's pedophilia and had actual ability to control Luddy's behavior, "by forcing him into treatment or by terminating his employment," all requirements of Section 317 were met.[29]

Justice Ralph J. Cappy filed a separate concurring opinion in which he stated his agreement with Justice Newman's opinion that St. Therese's should be released from liability, but that the judgment against Bishop Hogan and the Diocese should be affirmed.[30] Justice Cappy wrote separately to focus on the privilege element of Section 317, noting resolution as to whether this element was satisfied is difficult because the record reveals "numerous, and arguably inconsistent, reasons for Father Luddy's presence" in the two motel rooms.[31] Michael's own testimony supported at least six reasons for Michael to twice invite Luddy to his motel room, other than the fact that Luddy was Michael's priest:

> [because] (1) [Michael] missed Father Luddy; (2) Father Luddy

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25. *Hutchison*, 683 A.2d at 1256 n.6.

26. *Hutchison*, 742 A.2d at 1060.

27. *Id.*

28. *Id.* The court quoted extensively from Michael's testimony at trial in support of this finding, demonstrating that Michael invited Luddy to the motel rooms solely because Michael sought his counsel as his priest, and not because Michael wanted money or sexual activity. *Id.* at 1060-62.

29. *Id.* at 1062; *see* RESTATEMENT (SECOND) OF TORTS § 317(b)(i) and (ii) (1974) (requiring that the master know of the ability to control the servant and know of the reason for exercising such control).

30. *Id.* at 1062, 1063 n.1 (Cappy, J., concurring).

31. *Id.* at 1063 (Cappy, J., concurring).

> could help him with his depression; (3) Father Luddy was a good listener; (4) Father Luddy was a kind, nice person; (5) [Michael] had love in his heart for Father Luddy; and [6] [Michael] believed that Father Luddy might assist him financially.[32]

Despite these many possible reasons for Luddy's presence in the motel rooms, Justice Cappy wrote that the privilege element of Section 317 was satisfied here for two reasons: first, because the jury is always free to accept some parts of a witness's testimony and reject others, and second, because in Justice Cappy's view, the role of a priest includes counseling on a wide variety of personal matters, and is not limited to the exercise of religious duties.[33] Finally, Justice Cappy did not join in Justice Newman's criticism of the superior court for failing to analyze the case outside of the *Restatement (Second)*, because "the jury was instructed on liability solely pursuant to section 317."[34]

Justice Thomas G. Saylor wrote an opinion concurring in the result reached by Justice Newman, without analysis or rationale, and was joined by Justice Stephen A. Zappala.[35] Justice Saylor wrote separately simply to clarify that he did not join in the "characterization of the defendant's conduct as reckless and abhorrent" because the just overturned superior court had yet to analyze whether the award of punitive damages should be upheld.[36]

Justice Ronald D. Castille dissented, writing that although "the facts engender a great deal of outrage against the tortfeasor and sympathy for the victim, . . . the governing law is fixed and clear, and precludes liability for [all defendants]."[37] Focusing on the privilege element of Section 317, Justice Castille noted that because "the servant in this case, Luddy, was not upon premises *in possession of* the master at the time of the alleged negligent acts, the essence of the inquiry becomes whether Luddy was upon premises which he was privileged to enter *only* as his master's servant."[38] For Justice Castille, the one word from the Section 317

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32. *Hutchison*, 742 A.2d at 1063 n.2 (Cappy, J., concurring).

33. *Id.* at 1063-64 (Cappy, J., concurring).

34. *Id.* at 1064 (Cappy, J., concurring).

35. *Id.* (Saylor, J., concurring).

36. *Id.* (Saylor, J., concurring). See *id.* at 1059, where Justice Newman states that the defendants' "inaction in the face of such a menace is not only negligent, it is reckless and abhorrent."

37. *Hutchison*, 742 A.2d at 1064-65 (Castille, J., dissenting).

38. *Id.* at 1065 (Castille, J., dissenting) (emphasis added).

privilege clause that was not met here is the word "only;" because the record showed that Michael invited Luddy to the motel rooms for a variety of reasons, Justice Castille could not find "an exclusive causal nexus between Luddy's priestly status and his entry to the hotel room[s]."[39] Therefore, Justice Castille did not believe that Bishop Hogan and the Diocese had a duty with respect to the two incidents at issue.[40]

Hutchison was a very difficult case that unfortunately did not result in the clarification of Pennsylvania employment law in the important area of an employer's liability for an employee's acts that are outside the scope of employment. Perhaps a future case will further clarify the meaning of the Section 317 requirement that the conduct occur on premises "upon which the servant is privileged to enter only as his [master's] servant."

EMPLOYMENT LAW — WORKERS' COMPENSATION — OFF DUTY INJURIES — The Pennsylvania Supreme Court held that a workers' compensation claimant who sustained an injury while she was off duty but present at the workplace while obtaining her paycheck was entitled to workers' compensation benefits, despite the fact that the claimant had other options for obtaining her paycheck.

Hoffman v. Workers' Compensation Appeal Board (Westmoreland Hospital), 741 A.2d 1286 (Pa. 1999).

Nannie Hoffman, a secretary employed by Westmoreland Health System, fell down and hurt herself when she stopped by her workplace one Friday for the sole purpose of picking up her paycheck.[41] Hoffman was not scheduled to work that day, and her employer offered two other options for collecting paychecks that did not require the employee to visit the office on payday.[42] However, personal retrieval of paychecks at the workplace was an authorized method for Westmoreland Health System employees to

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39. *Id.* at 1065-68 (Castille, J., dissenting).

40. *Id.* at 1065-68 (Castille, J., dissenting). In a final footnote, Justice Castille clarified that the *Hutchison* opinion should not be interpreted as resolving an issue that the courts of other jurisdictions have recently grappled with: whether "a cause of action against a religious sect for negligent retention of its religious leaders . . . [constitutes] excessive entanglements with religious beliefs contrary to the First Amendment of the United States Constitution." *Id.* at 1068 n.7 (Castille, J., dissenting).

41. *See* Hoffman v. Workers' Compensation Appeal Bd. (Westmoreland Hospital), 741 A.2d 1286, 1286-87 (Pa. 1999).

42. *See Hoffman*, 741 A.2d at 1286-87. The two options that did not require the employee to visit the workplace were "direct deposit to a financial institution" and "delivery by regular mail." *See id.* at 1286.

be paid.[43]

In response to Hoffman's subsequent petition for workers' compensation benefits, her employer "conceded the [she] had been injured but denied that [she] was acting within the course of her employment at the time she suffered the injury" as required by Pennsylvania's Workers' Compensation Act.[44] The workers' compensation judge agreed, "finding that [Hoffman's] injury did not arise in the course of her employment."[45] Hoffman appealed first to the Pennsylvania Workers' Compensation Appeal Board and subsequently to the Pennsylvania Commonwealth Court, both of which affirmed the workers compensation judge's decision to deny benefits.[46]

The Pennsylvania Supreme Court granted Hoffman's petition for appeal in order to determine whether an employee is within the scope of employment for workers' compensation purposes when that employee's "presence was not required [at the workplace] for the payment of wages, but rather, [the employee] had available alternative options for obtaining payment."[47] Justice Thomas G. Saylor wrote the opinion for the unanimous court, reversing the commonwealth court and remanding the case "for calculation of benefits."[48]

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43. *See id.* at 1286.

44. *See id.* at 1287. Pennsylvania's Workers' Compensation Act states in relevant part as follows:

> Every employer shall be liable for compensation for personal injury to, or for the death of each employe[e], by an injury *in the course of his employment*, and such compensation shall be paid in all cases by the employer, without regard to negligence, according to the [statutory] schedules.

PA. STAT. ANN. tit. 77, § 431 (West Supp. 2000) (emphasis added).

45. *See Hoffman*, 741 A.2d at 1287.

46. *See* Hoffman v. Workers' Compensation Appeal Bd. (Westmoreland Hospital), 711 A.2d 567, 568 (Pa. Commw. Ct. 1998), *overruled by* Hoffman v. Workers' Compensation Appeal Bd. (Westmoreland Hospital), 741 A.2d 1286 (Pa. 1999). Senior Judge Jess Juliante wrote the commonwealth court's opinion and was joined by Judge Dante R. Pelligrini,. *Hoffman*, 711 A.2d at 568. Judge Rochelle S. Friedman dissented, writing that

> [b]ecause being paid is a major benchmark of the employer-employee relationship, because [Hoffman] received her paycheck in accordance with an acceptable method established by [Westmoreland Health System] and because we are required to liberally construe the [Workers' Compensation] Act to the benefit of injured workers, I would conclude that [Hoffman] satisfied her burden of proving that she was injured while in the course of her employment.

Hoffman, 711 A.2d at 571 (Friedman, J., dissenting).

47. *Hoffman*, 741 A.2d at 1288. At the supreme court, attorney Robert H. Slone from the Greensburg law firm of Mahady & Mahady represented Hoffman, and attorney Harry W. Rosensteel from the Pittsburgh law firm of Thomson, Rhodes & Cowie represented Westmoreland Hospital. *See id.* at 1286.

48. *Id.* at 1288.

The *Hoffman* court began its analysis by noting that determining "[w]hether a claimant's injury arose 'within the course of employment' under the [Workers' Compensation] Act . . . is a question of law to be determined based on the findings of fact."[49] The court then noted that the Workers' Compensation Act defines the phrase "arising in the course of employment" to include two categories: (1) "injuries sustained in furtherance of the business or affairs of the employer," and (2) "certain other injuries" that occur on property that the employer occupies, controls, or "upon which the employer's business affairs are conducted."[50] Regarding this second category, the Workers' Compensation Act requires "that the nature of the employment *requires* the employee's presence on the premises where the injury occurred."[51] On its face, Hoffman's claim did not appear to fit either category, because when she stopped by her workplace solely for the purpose of picking up her paycheck, she was not furthering her employer's business, and Hoffman was not *required* to be physically present at the workplace in order to be paid.[52]

However, Justice Saylor cited several Pennsylvania Superior Court opinions that have "acknowledged the receipt of wages as a fundamental aspect of the employment relationship" in support of the *Hoffman* court's decision to award benefits.[53] According to the *Hoffman* court, the fact that Hoffman was not required to be present at the workplace in order to be paid does not bar her claim; the court stated its holding as follows:

> [R]egardless of other available options, an employee's presence at the workplace to obtain a paycheck pursuant to an employer-approved practice bears a sufficient relationship to a necessary affair of the employer (payment of due wages) to fall within the course of employment as defined in . . . the [Workers' Compensation] Act.[54]

The court did not expressly tie its holding to one of the two categories of "arising within the course of employment" discussed

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49. *Id.* at 1287 (citing Paulin v. Williams & Co., 195 A. 40, 42 (Pa. 1937)).

50. *Id.*; *see* PA. STAT. ANN. tit. 77, § 411 (West Supp. 2000).

51. *Hoffman*, 741 A.2d at 1287 & n.3 (emphasis added); *see* PA. STAT. ANN. tit. 77, § 411 (West Supp. 2000).

52. *Hoffman*, 741 A.2d at 1287-88.

53. *Id.* at 1288 (citing Dandy v. Glaze, 177 A.2d 157, 159 (Pa. Super. Ct. 1962); Griffin v. Acme Coal Co., 54 A.2d 69, 70 (Pa. Super. Ct. 1947)).

54. *Id.*

above.[55]

This decision of the Pennsylvania Supreme Court brings Pennsylvania in line with the relevant workers' compensation law of Oklahoma, Michigan, and New Mexico.[56]

EMPLOYMENT LAW — WORKERS' COMPENSATION — EMPLOYER'S PETITION TO TERMINATE BENEFITS — The Pennsylvania Supreme Court held that an employer attempting to terminate worker's compensation benefits does not have the burden of proving the absence of a causal relationship between the work-related injury and a subsequently alleged psychiatric injury when the employer only accepted liability for the physical injuries suffered by the claimant; the employer need only prove that the physical injuries have ceased.

Commercial Credit Claims v. Workmen's Compensation Appeal Board (Lancaster), 728 A.2d 902 (Pa. 1999).

On July 28, 1983, John Lancaster plunged nearly twenty-eight feet from a catwalk while taking photographs for his job as a claims adjuster.[57] Lancaster's employer, Commercial Credit Claims ("Commercial"), and its insurance carrier subsequently issued a notice of compensation payable[58] and accepted liability for Lancaster's physical injuries.[59] Three years later, Commercial filed a petition to terminate Lancaster's benefits, "alleging that as of April 28, 1986, claimant had fully recovered from the work-related injury."[60] Lancaster later testified that he continued to experience pain.[61] Conversely, a board-certified neurologist for Commercial opined that the initial injuries could not have caused the current pain; instead, he believed that Lancaster's main problem was psychological in nature, not physical.[62]

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55. *Id.*

56. *Id.* (citing St. Anthony Hosp. v. James, 889 P.2d 1279 (Okla. Ct. App. 1994); Dunlap v. Clinton Valley Center, 425 N.W.2d 553 (Mich. Ct. App. 1988); and Martinez v. Stoller, 632 P.2d 1209 (N.M. Ct. App. 1981)).

57. *See* Commercial Credit Claims v. Workmen's Compensation Appeal Bd. (Lancaster), 728 A.2d 902, 903 (Pa. 1999).

58. The Pennsylvania Workmen's Compensation Act provides that the employer shall "commence the payment of compensation due either pursuant to an agreement upon the compensation payable or a notice of compensation payable." PA. STAT. ANN. tit. 77, § 717.1(a) (West Supp. 2000).

59. *See Commercial Credit Claims*, 728 A.2d at 903. Commercial described Lancaster's physical injuries as "cervical syndrome, sprain[ed] right sternoclavicular joint." *See id.*

60. *See id.*

61. *See id.*

62. *See id.*

The worker's compensation judge ("WCJ") found that the neurologist never "rule[d] out the nexus between the claimant's work injury and the disabling [psychological] condition."[63] Because the neurologist raised the possibility that Lancaster's psychological problem could have stemmed from the work injury, the WCJ denied Commercial's termination petition.[64] Subsequently, both the Workmen's Compensation Appeal Board and the Pennsylvania Commonwealth Court affirmed.[65]

The Pennsylvania Supreme Court granted Commercial's petition for appeal in order to determine whether an employer attempting to terminate worker's compensation benefits must disprove a causal relationship between the work-related injury and a subsequently alleged psychiatric injury when the employer only accepted liability for the physical injuries suffered by the claimant.[66]

The court reversed the commonwealth court and granted Commercial's petition to terminate benefits.[67] Writing for the court, Justice Ronald D. Castille began by examining the relevant sections of the Pennsylvania Workers' Compensation Act ("Act").[68] First, the court stated that Commercial complied with the Act when it commenced payment of compensation "pursuant to . . . a notice of compensation."[69] Next, the court found that the notice of compensation, which defined the terms for payment and described the injury, was "valid and binding unless modified or set aside" as provided for in the Act.[70] Finally, after reviewing the modification procedures set forth in the Act, Justice Castille stated that either party may file a petition to modify the original notice of compensation payable; the moving party must then prove the

63. *See id.*

64. *See Commercial Credit Claims*, 728 A.2d at 903.

65. *See id.*

66. *Id.* At the supreme court, attorneys Fred C. Trenor and Miles D. Kirshner from Pittsburgh represented Commercial, and attorney Anthony Kovach from Uniontown represented Lancaster. *See id.* at 902. Justice Ronald D. Castille wrote the opinion for the majority, which included Chief Justice John P. Flaherty, Jr., and Justices Stephen A. Zappala, Sandra Schultz Newman, and Thomas G. Saylor. *Id.* at 902-06. Justice Ralph J. Cappy concurred in the result only. *Id.* at 906. Justice Russell M. Nigro filed a separate opinion, concurring in part and dissenting in part. *Id.* at 906-07 (Nigro, J., concurring and dissenting).

67. *Id.*

68. *Id.*

69. *Commercial Credit Claims*, 728 A.2d at 904. *See* PA. STAT. ANN. tit. 77, § 711.1(a) (West Supp. 2000).

70. *Commercial Credit Claims*, 728 A.2d at 904. *See* PA. STAT. ANN. tit. 77, § 731 (West 1992).

grounds for modification.[71] Thus, the court found that Lancaster's "subsequently alleged psychiatric injuries could have formed the predicate for compensation under the Act only if the Notice of Compensation Payable was first properly modified . . . to reflect the employer's increased liability for these distinct injuries."[72]

Relying on the Act to reach its conclusion, the court held that Commercial needed only to prove that Lancaster's physical injuries had ceased; therefore, Commercial had no burden to disprove a causal relationship between the work injury and the subsequently alleged psychological injury.[73] Because Lancaster never attempted to modify the terms of the original notice of compensation payable, the court stated that the proper inquiry is whether the injuries initially described by Commercial had been resolved.[74] Consequently, the court granted Commercial's petition to terminate benefits because the expert testimony of the neurologist established that the original physical injuries had been resolved.[75]

In addition to the statutory language, the court relied on the underlying goals of the Act in reaching its conclusion.[76] Based on the principle of fairness, the court concluded that it would "impose a burden on an employer to 'prove a negative' by establishing that the subsequently alleged psychiatric injury bore no causal relationship to the work-related accident."[77] The majority contended that allowing employees to continue to receive benefits until the employer disproves a causal relationship would "strain the humanitarian goals underlying the [Act]."[78] The court reversed the order of the commonwealth court.[79]

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71. *See Commercial Credit Claims*, 728 A.2d at 905. The Act provides that a notice of compensation payable may be modified or set aside "upon petition filed by either party . . . if it be proved that such notice of compensation payable . . . was in any material respect incorrect." Title 77, § 771 (West Supp. 2000). The Act also provides that a workers' compensation judge may "modify, reinstate, suspend, or terminate a notice of compensation payable . . . upon petition filed by either party . . . upon proof that the disability of an injured employe has increased, decreased, recurred, or has temporarily or finally ceased." Title 77, § 772 (West Supp. 2000).

72. *Commercial Credit Claims*, 728 A.2d at 905.

73. *Id.*

74. *Id.*

75. *Id.* at 905, 906.

76. *Id.* at 905. The court emphasized that "sound considerations of policy militate heavily in favor of this conclusion." *Id.*

77. *Commercial Credit Claims*, 728 A.2d at 905.

78. *Id.* Justice Castille noted that notwithstanding the court's decision, Lancaster may still file a petition for review to amend the original notice of compensation payable by proving that the psychiatric injury resulted from the original work-related injury. *Id.*

79. *Id.* at 906.

Concurring in part, Justice Russell M. Nigro agreed with the majority that Commercial did not have to disprove the causal relationship between the work-related injury and the subsequent psychiatric injury.[80] Regarding the majority's decision to terminate benefits, however, Justice Nigro disagreed.[81] In dissent, Justice Nigro stated that, to terminate benefits, an "employer must establish that all disability related to a compensable injury has ceased."[82] Justice Nigro determined that Commercial did not meet this burden based on the testimony of the neurologist.[83] The dissent, therefore, would have remanded the case to determine whether Lancaster's initial injuries had, in fact, ceased.[84]

EMPLOYMENT LAW — WORKERS' COMPENSATION — SELF INFLICTED INJURIES — The Pennsylvania Commonwealth Court held that an employer met its burden of proof for its suspension of compensation benefits by proving that the employee voluntarily removed himself from the work-force by self-inflicting a gunshot wound to the head, and that the employee was not able to raise the argument that an earlier work-related back injury caused the mental imbalance that provoked the self-inflicted injury because the employee did not properly preserve this issue for appeal.

Curtis v. Workers' Compensation Appeal Board (Berley Electric Company), 730 A.2d 528 (Pa. Commw. Ct. 1999).

Around 1:30 a.m. on December 19, 1998, Keith Curtis loaded his gun with one bullet, spun the chamber, and aimed it at his head.[85] The first time Curtis pulled the trigger, the gun did not discharge.[86] Pulling the trigger a second time, however, Curtis shot himself in the head, inflicting an injury that left him in a vegetative state.[87]

Almost two years before this incident, Curtis had injured his

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80. *Id.* (Nigro, J., concurring and dissenting).

81. *Id.* (Nigro, J., concurring and dissenting).

82. *Commercial Credit Claims*, 728 A.2d at 906 (Nigro, J., concurring and dissenting) (citing Pieper v. Ametek-Thermox Instruments Div., 584 A.2d 301 (Pa. 1990)).

83. *Id.* at 906, 907 (Nigro, J., concurring and dissenting).

84. *Id.* at 907 (Nigro, J., concurring and dissenting).

85. *See* Curtis v. Workers' Compensation Appeal Bd. (Berley Electric Co.), 730 A.2d 528, 531 (Pa. Commw. Ct. 1999). The shot to the head followed an afternoon and evening during which Curtis drank a case of beer, snorted cocaine, and argued with his girlfriend, Vicki Beaky, because Curtis had not yet packed for an upcoming trip to Las Vegas. *See id.* at 530. After this argument, Curtis went into the bedroom with a gun, and Beaky heard Curtis empty the bullets. *See id.* Curtis then reentered the room where Beaky was, and placed one bullet in the gun's chamber. *See id.*

86. *See Curtis*, 730 A.2d at 531.

87. *See id.* Curtis is "unlikely to ever recover." *See id.*

lower back while working at Berley Electric Company ("Berley") and began receiving total workers' compensation benefits under the Pennsylvania Workers' Compensation Act ("Act").[88] Several months after this initial work-related injury, Curtis encountered increased pain in his back and right leg.[89] A second MRI found a recurrent disc herniation; the treating physician recommended a procedure that involved excising the disc and possible fusion.[90]

In addition to the medical treatment, another physician was treating Curtis for psychological problems that stemmed from alcoholism abuse, drug addiction, and marital difficulties, all of which surfaced before his work-related injury.[91] In spite of this treatment, Curtis continued abusing drugs and alcohol, which necessitated three hospital visits within four days, less than one month before he shot himself.[92] During the first two hospital visits, Curtis refused medical treatment and signed himself out of the hospital against medical advice.[93] On the third hospital visit, an emergency room physician signed an application to have Curtis involuntarily committed under Pennsylvania statute for a psychiatric evaluation.[94] Less than one month later, Curtis shot himself.[95]

Berley then filed a petition to suspend Curtis' workers' compensation benefits for the work-related back injury, alleging that the disc excision and fusion surgery that Curtis never received would have brought about a partial or complete recovery of Curtis' back injury and allowed his return to work.[96] Additionally, Berley alleged that by refusing medical treatment and by intentionally shooting himself in the head, Curtis voluntarily withdrew from the work force, thereby removing himself from coverage under the

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88. *See id.* at 530. Medical tests revealed a herniated disk on Curtis' right side. *See id.*

89. *See id.* at 530.

90. *See id.*

91. *See Curtis*, 730 A.2d at 530. The family doctor had prescribed various medications for tremors and other symptoms associated with alcohol withdrawal. *See id.*

92. *See id.*

93. *See id.*

94. *See id.* The statute referred to is the Pennsylvania Mental Health Procedures Act, PA. STAT. ANN. tit. 50, §§ 7101-7503 (West 1998). For an argument that Pennsylvania courts inconsistently interpret the Pennsylvania Mental Health Procedures Act, and a suggested interpretation, see Steven B. Datlof, *The Law of Civil Commitment in Pennsylvania: Towards a Consistent Interpretation of the Mental Health Procedures Act*, 38 DUQ. L. REV. 1 (1999).

95. *See Curtis*, 730 A.2d at 531.

96. *See id.* at 531.

Act.[97]

Initially, the workers' compensation judge ("WCJ") denied Berley's petitions and ordered that Curtis continue to receive his benefits.[98] Subsequently, Berley appealed to the Workers' Compensation Appeal Board ("Board"), which remanded the case for additional fact finding.[99] On remand, the WCJ concluded (1) that the disc excision and fusion procedure available to Curtis was reasonable and (2) that a review of all the circumstances indicated that Curtis did not want to reduce his disability and return to work, but instead, wanted to end his life.[100] Further, the WCJ held that Berley satisfied its burden of showing that Curtis refused reasonable medical treatment.[101] After the WCJ granted Berley's petition to suspend workers' compensation benefits, Curtis appealed to the Board; the Board affirmed the decision below.[102]

On appeal, the Pennsylvania Commonwealth Court considered whether "the WCJ erred by concluding [that Curtis] intentionally inflicted injury to himself and thereby voluntarily removed himself from the work force," consequently forfeiting his rights to future compensation.[103] Authoring the court's opinion, Judge James Flaherty rejected Curtis' argument that the self-inflicted injury was compensable because it was causally related to his preexisting work injury.[104] Curtis maintained that the WCJ erred by failing to apply the "chain-of-causation test" before determining that his self-inflicted injury forfeited his right to continued compensation under the Act for his initial work-related back injury.[105]

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97. *See id.*

98. *See id.* at 531.

99. *See id.*

100. *See Curtis*, 730 A.2d at 532.

101. *See id.*

102. *See id.*

103. *Id.* at 532. Curtis also raised the issue of whether the WCJ erred by concluding that [Curtis] refused reasonable medical treatment;" however, because the court affirmed the WCJ on the first issue, "[it] [was] not necessary to address [Curtis'] second issue." *Id.* at 532, 536.

At the commonwealth court, attorney George D. Walker, Jr., from the Philadelphia law firm of Larry Pitt & Associates represented Curtis, and attorney Martin J. Fallon, Jr., from the Philadelphia law firm of Swartz Campbell & Detweiler represented Berley. *See id.* at 529.

Judge James J. Flaherty wrote the opinion for a unanimous panel of the court, which included Judge Dante R. Pelligrini and Senior Judge Mirarchi, Jr. *See id.* at 529-36.

104. *Id.* at 532-33, 536.

105. *See Curtis*, 730 A.2d at 532. The court explained the chain-of-causation test as follows:

> The three elements of the chain-of-causation test which render an otherwise non-compensable self-inflicted injury compensable under the [Pennsylvania Workers'

Judge Flaherty explained that the chain-of-causation test, which is used to establish whether a "self-inflicted injury occurred during an episode for which the employee was not legally responsible," placed a burden "upon [Curtis] to prove that a self-inflicted injury which is otherwise not compensable under [the Pennsylvania Workers' Compensation Act], [became] compensable because it was causally related to a pre-existing work-related injury."[106] Because the Act specifically prohibits compensation for intentionally inflicted injuries, in such cases the employer has the initial burden "to prove that the injury was intentionally self-inflicted."[107] Once the employer meets that burden, the burden of proof then shifts to the claimant to prove, under the chain-of-causation test, that a pre-existing work-related injury disturbed the claimant's mental processes to the point that a self-inflicted injury or suicide resulted.[108] Before this burden shift, however, the court demonstrated that the requirements placed upon the employer seeking to suspend, terminate, or modify benefits are satisfied when the employer proves that the employee has voluntarily removed himself from the labor market.[109]

Agreeing with Curtis that the chain-of-causation test should typically be applied in such a case, the court, nonetheless, disposed of Curtis' argument because Curtis did not raise an argument about the work-related nature of his injury in the initial litigation; therefore, this issue was not preserved for appeal.[110] Thus, the

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Compensation Act] are:

1) the Claimant initially suffered a work-related injury as defined by [the Act];

2) the initial work-related injury caused the Claimant to become dominated by a disturbance of the mind of such severity as to override normal rational judgment; and

3) this mental disturbance resulted in the self-inflicted injury or suicide.

Id. at 533 n.8 (citing Globe Security Systems Co. v. Workmen's Compensation Appeal Bd. (McCoy Catering Services), 518 A.2d 883 (Pa. Commw. Ct. 1986)). The court stressed that "the use of the word *awarded* substantially differentiates the facts and issues in the case sub judice, since the critical issue in the case before us is not the awarding of benefits, but is instead, the *suspension* of benefits." *Id.* at 532 n.8 (emphasis added). Although this was the first time that the chain-of-causation test had been raised regarding the suspension of benefits, the court concluded that it should be applied when determining the suspension of benefits, as well as when determining the award of benefits, because of a self-inflicted injury. *Id.* at 533.

106. *Id.* at 533.

107. *Id.* at 533 n.9 & n.10 (stating that "[w]ithout anything further, once the Employer proves that the injury was intentionally self-inflicted, benefits under the Act must be denied"). *See* PA. STAT. ANN. tit. 77, § 431 (stating that "no compensation shall be paid when the injury or death is intentionally self-inflicted").

108. *Id.* at 533 n.10.

109. *Id.* at 534.

110. *Curtis*, 730 A.2d at 533-34.

court limited its review to the issue of whether Berley properly suspended the compensation benefits.[111] The court concluded that Berley met its burden of proving that Curtis voluntarily removed himself from the work force by providing evidence that Curtis put a loaded gun to his own head and pulled the trigger.[112] The court emphasized that because Curtis never contended that his work-related injuries caused him to shoot himself, Curtis waived the issue.[113] Further, the court accepted the WCJ findings that Curtis shot himself as a result of problems with his marriage, his girlfriend, and alcohol.[114] Judge Flaherty, writing for the court, affirmed the WCJ and the Board's decisions and found that Curtis forfeited his right to future compensation when he pulled that trigger.[115]

EMPLOYMENT LAW — WORKERS' COMPENSATION — EXCLUSIVITY OF RELIEF — The Pennsylvania Superior Court held that an employee's defamation and malicious abuse of process claims against an employer are not barred by the exclusivity provisions of the Workers' Compensation Act because the essence of those torts is to vindicate harm to one's reputation, which is not an injury under the Act.

Urban v. Dollar Bank, 725 A.2d 815 (Pa. Super. Ct. 1999), appeal granted, 742 A.2d 172 (Pa. Aug. 6, 1999).

While packing her suitcases for a three-week Florida vacation from her job as the lead teller in a suburban branch of Dollar Bank, a surprised Lynn Urban was interrupted by police officers executing an application to have her involuntarily committed.[116] The involuntary commitment application was filed by one of Urban's co-workers, based on a report known to Dollar Bank personnel to be false that Urban said she "would have no problem bringing a gun in here and killing someone."[117]

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111. *Id.* at 535.

112. *Id.*

113. *Id.*

114. *Id.* at at 535.

115. *Curtis*, 730 A.2d 536.

116. *See* Urban v. Dollar Bank, 725 A.2d 815, 817 (Pa. Super. Ct. 1999), appeal granted, 742 A.2d 172 (Pa. Aug. 6, 1999).

117. *Urban*, 725 A.2d at 817. The involuntary commitment application was filed under the Pennsylvania Mental Health Procedures Act, PA. STAT. ANN. tit. 50, §§ 7101-7503 (West 1998). For an argument that Pennsylvania courts inconsistently interpret the Pennsylvania Mental Health Procedures Act, and a suggested interpretation, see Steven B. Datlof, *The Law of Civil Commitment in Pennsylvania: Towards a Consistent Interpretation of the Mental*

Urban was shocked to learn that Dollar Bank had instituted an involuntary commitment against her, and because she was "calm and cooperative," the police called Dollar Bank to verify that it still wanted to go through with the involuntary commitment.[118] After receiving such verification, Urban was "strapped to a gurney by paramedics and taken to St. Clair Memorial Hospital."[119] Urban was detained at the hospital for several hours, until a fifteen minute interview with a staff psychiatrist made it clear that she was not suffering from any "severe mental disability" sufficient to support the involuntary commitment.[120] Subsequent litigation produced evidence tending to show that Dollar Bank used the involuntary commitment to build a record to justify later firing Urban.[121]

A few months after the incident, Urban filed a complaint against Dollar Bank for, among other things, defamation and malicious abuse of process.[122] Urban sought damages for injury to her emotional being, injury to her reputation, and dimunition of her earning capacity and her "ability to enjoy the pleasures of life."[123] Dollar Bank moved for summary judgment, arguing that the Pennsylvania Workers' Compensation Act ("Act") barred Urban's claim because the Act is the exclusive remedy for Pennsylvania employees who suffer on-the-job injuries or deaths.[124] The trial court granted Dollar Bank's motion, and Urban appealed to the Pennsylvania Superior Court.[125]

In a well-crafted opinion by Judge Kate Ford Elliott, the superior court reversed the trial court and held that the Pennsylvania Workers' Compensation Act does not bar an employee's claims of defamation and malicious abuse of process.[126] Judge Ford Elliot's

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Health Procedures Act, 38 DUQ. L. REV. 1 (1999).

118. *See Urban*, 725 A.2d at 817.

119. *See id.*

120. *See id.*; Urban v. Dollar Bank, 34 Pa. D. & C.4th 11, 12 (Comm. Pleas Allegheny Co. 1996).

121. *See Urban*, 725 A.2d at 817.

122. *See id.*

123. *See id.*

124. *See id.* at 817-18; PA. STAT. ANN. tit. 77, § 481(a) (West 1992) (setting forth the exclusive nature of the Act).

125. *See Urban*, 725 A.2d at 817. At the superior court, attorney Patrick J. Loughren from the Pittsburgh law firm of Loughren, Loughren & Loughren represented Urban, and attorney Lori D. Mendicino from the Pittsburgh law firm of Robb, Leonard & Mulvihill represented Dollar Bank. *See id.* at 816.

Judge Kate Ford Elliott wrote the opinion for a unanimous panel, which included Judge J. Michael Eakin and Judge Beck. *See id.* at 816-22.

126. *Id.* at 816. The superior court affirmed the trial court's decision that the Act bars claims of intentional infliction of emotional distress and negligent infliction of emotional

analysis of the legal issue began by explaining that "[t]he Act provides the exclusive remedy for employees who are 'entitled to damages in any action at law or otherwise on account of any injury or death' as defined in [sections 411(1) and 411(2)]."[127] The Act does not provide a definition of the term "injury;" Pennsylvania appellate courts have interpreted "injury" as it is used in the Act to include "physical impairment, occupational disease, and mental illness or psychiatric injury."[128] Judge Ford Elliot relied on a dissenting opinion in *Hammerstein v. Lindsay*,[129] a 1995 decision of the superior court, for the proposition that under the Act, injured workers are entitled to a remedy only "for partial or total 'disability,' i.e., diminution in earning power, and for medical services."[130]

The *Urban* court then found that the essence of the tort of defamation is to provide compensation for an injury to one's reputation, not to compensate one for a physical or emotional impairment that requires medical treatment.[131] The court rejected Dollar Bank's argument that the Act bars a civil suit for defamation because the Act bars all suits based on intentional torts committed by employers.[132] Distinguishing a superior court precedent that "affirm[ed] the dismissal of claims for intentional infliction of emotional distress and intentional interference with contractual relationship," the court held that injury to one's reputation is too "attenuated from any injury contemplated by the Act" for the Act to

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distress. *Id.* at 822. Judge Ford Elliot was joined in her opinion by Judges Eakin and Beck. *Id.* at 816.

127. *Id.* at 818 (footnote omitted) (quoting PA. STAT. ANN. tit. 77, § 481(a) (West 1992)).

128. *Id.* at 819 (citing Hammerstein v. Lindsay, 655 A.2d 597 (Pa. Super. Ct. 1995) (Wieand, J., dissenting) (citing Martin v. Ketchum, Inc., 568 A.2d 159 (Pa. 1990); Al's Radiator Service v. WCAB (Jorden's Radiator Service), 630 A.2d 485 (Pa. Commw. Ct. 1993); and Archer v. WCAB (General Motors), 587 A.2d 901 (Pa. Commw. Ct. 1991))).

129. 655 A.2d 597 (Pa. Super. Ct. 1995).

130. *Urban*, 725 A.2d at 819 (citing *Hammerstein*, 655 A.2d at 605 (Wieand, J., dissenting)).

131. *Id.* (quoting *Hammerstein*, 655 A.2d at 605-06 (Wieand, J., dissenting)). In a footnote, the *Urban* court provided the following definition of the tort of defamation in Pennsylvania:

> A statement is defamatory if it (1) so *harms the reputation* of the complaining party so as to lower her in the estimation of the community, (2) deters third parties from associating or dealing with her, (3) exposes her to public hatred, contempt, or ridicule, or (4) adversely affects her fitness for the proper conduct of her lawful business or profession.

Id. at 819 n.5 (emphasis added) (citing Green v. Mizner, 692 A.2d 169, 172 (Pa. Super. Ct. 1997)).

132. *Id.* at 819-20.

bar a civil suit for defamation.[133]

Similarly, Judge Ford Elliot found that the tort of malicious abuse of process "is designed to vindicate, inter alia, harm to one's reputation and financial injury sustained as a result of the tort."[134] Therefore, the *Urban* court found "that this claim is also not wholly barred by the exclusivity provisions of the Act."[135] Finally, the superior court clarified that Urban would not be able to recover for emotional injuries resulting from her employer's defamatory conduct and malicious abuse of process, because injury to one's emotional being is covered by the Act; however, Urban "is free to seek compensation at common law for the other elements of damage arising from the [two torts]."[136]

This significant case, which allows Pennsylvania employees a limited ability to sue their employers outside the Pennsylvania Workers' Compensation Act for at least two intentional torts, defamation and malicious abuse of process, will soon be heard by the Pennsylvania Supreme Court.[137]

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133. *Id.* at 820 (discussing Shaffer v. Procter & Gamble, 604 A.2d 289 (Pa. Super. Ct. 1992) and Martin v. Lancaster Battery Co., 606 A.2d 444 (Pa. 1992)).

134. *Id.* at 821. The court quoted the relevant Pennsylvania statute that "specifically enumerate[s] six classes of compensable damages for [malicious abuse of process]":

> (1) The harm normally resulting from any arrest or imprisonment, or any dispossession or interference with the advantageous use of his land, chattels or other things, suffered by him during the course of the proceedings.
>
> (2) The harm to his reputation by any defamatory matter alleged as the basis of the proceedings.
>
> (3) The expense, including any reasonable attorney fees, that he has reasonably incurred in defending himself against the proceedings.
>
> (4) Any specific pecuniary loss that has resulted from the proceedings.
>
> (5) Any emotional distress that is caused by the proceedings.
>
> (6) Punitive damages according to law in appropriate cases.

Id. See 42 PA. CONS. STAT. § 8353 (1998).

135. *Urban*, 725 A.2d at 821.

136. *Id.* at 822.

137. Urban v. Dollar Bank, 742 A.2d 172 (Pa. Aug. 6, 1999) (granting appeal).